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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Technical assistance and capacity-building

Report of the United Nations High Commissioner for Human Rights on cooperation with Georgia

Summary

The present report is submitted pursuant to Human Rights Council resolution 37/40, in which the Council requested the United Nations High Commissioner for Human Rights to continue to provide technical assistance to Georgia through the presence of his office in Tbilisi and to present, inter alia, a written report on developments relating to and the implementation of the resolution at its thirty-ninth session. The Council also called for immediate access for the Office of the United Nations High Commissioner for Human Rights (OHCHR) and international and regional human rights mechanisms to Abkhazia, Georgia, and to the Tskhinvali region/South Ossetia, Georgia.

In the report the High Commissioner presents an update on technical assistance provided by OHCHR to strengthen the promotion and protection of human rights in Georgia since the presentation of his first report on this subject in 2017 (A/HRC/36/65). He also highlights the main human rights developments and challenges that need to be further addressed.

During the reporting period there has been no progress on granting access for OHCHR or international human rights mechanisms to Abkhazia and/or South Ossetia. The update contained in the report on the human rights situation concerning these regions is therefore based on information received by OHCHR and available in credible open-source documents.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 37/40, in which the Council requested the United Nations High Commissioner for Human Rights to continue to provide technical assistance through the presence of his office in Tbilisi. The Council also called for immediate access for the Office of the United Nations High Commissioner for Human Rights (OHCHR) and international and regional human rights mechanisms to Abkhazia, Georgia and the Tskhinvali region/South Ossetia, Georgia.[1]

2. The Council requested the High Commissioner to present an oral update on the follow-up to resolution 37/40 at its thirty-eighth session[2] and a written report on developments relating to and the implementation of the resolution at its thirty-ninth session.

3. In the current report the High Commissioner presents an update on the technical assistance provided by OHCHR in Georgia and on the main human rights developments since his first written report on this subject in 2017.[3] The report therefore covers the period from 1 June 2017 to 31 May 2018.

4. In April 2018, OHCHR posted on its website a call for submissions pursuant to resolution 37/40 to seek contributions from various stakeholders in order to inform the oral update and report of the High Commissioner. The present report therefore draws on information provided by the Government of Georgia, the Office of the Public Defender of Georgia (an "A" status national human rights institution), international and regional organizations and non-governmental organizations, as well as on other credible open-source documents.

5. OHCHR has continued to exercise due diligence to corroborate, to the extent possible, the validity of the information received, within the constraints of limited resources and the continuing lack of access to Abkhazia and South Ossetia. In the report the High Commissioner highlights key human rights issues and developments on the basis of information received by OHCHR and does not seek to present a comprehensive account of the human rights matters related to Georgia.

II. Technical assistance and human rights developments

6. The OHCHR Senior Human Rights Adviser for the South Caucasus, who has been deployed in Tbilisi since 2007 and supported by national staff in Georgia and Azerbaijan, with the benefit of the full cooperation of the host country, has continued to advise and provide technical assistance to the Government and institutions of Georgia, civil society organizations and other actors. He continued to focus on supporting the compliance of legislation, policies and practices with international human rights standards, addressing respective gaps and assisting the implementation of the National Human Rights Strategy and the related Action Plan.

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[1] For the purposes of the present report, Abkhazia, Georgia and the Tskhinvali region/South Ossetia, Georgia are referred to as Abkhazia and South Ossetia.

[2] The oral update was presented on 4 July 2018, with an archived webcast available at http://webtv.un.org/meetings-events/watch/item10-general-debate-34th-meeting-38th-regular-session-human-rights-council/5805366324001/?term=.

[3] Pursuant to Human Rights Council resolution 34/37, adopted in March 2017, an oral update and a written report of the High Commissioner (A/HRC/36/65) on the same subject were presented to the Council for the first time on 21 June and 28 September 2017, respectively. The archived webcast of the oral update is available at http://webtv.un.org/meetings-events/human-rights-council/regular-sessions/35th-session/watch/item10-general-debate-32nd-meeting-35th-regular-session-human-rights-council/5478270539001.

A. Main areas of technical assistance provided by the Office of the United Nations High Commissioner for Human Rights

7. Along with other United Nations entities, OHCHR assisted the Government of Georgia with the elaboration and implementation of its National Human Rights Action Plan 2018–2020, adopted in April 2018, including in the framework of the programme "Human rights for all", a joint United Nations initiative funded by the European Union. Such support included updating the Action Plan with recommendations of United Nations and regional human rights bodies and building the capacity of various national counterparts such as members and staff of the parliament, staff of the National Human Rights Secretariat, representatives of local self-government bodies, judges and court staff, police officers, legal professionals, journalists, civil society organizations, university students and youth groups. Between 1 June 2017 and 31 May 2018, OHCHR conducted 44 capacity-building activities in Georgia, including seminars, workshops and lectures. Most of these activities were planned in close consultation with the National Human Rights Secretariat in the Administration of the Government of Georgia and were conducted in response to requests by, and in cooperation with, the Government.

8. With OHCHR support, the parliament of Georgia introduced amendments to its regulations and increased its oversight role in the implementation of the country's human rights obligations. Since 2017, the relevant committees of the parliament[4] have held several hearings on the implementation by the executive branch of recommendations of international and regional human rights mechanisms and of the Public Defender as well as of the decisions of the European Court of Human Rights.

9. The Inter-Agency Council, established in 2014 to coordinate the implementation of the National Human Rights Action Plan, has, however, still not convened.

10. In this section of the report key human rights areas which OHCHR aimed to address through its technical assistance during the reporting period are highlighted.

1. Administration of justice

11. OHCHR has continued to support the justice sector, focusing on building the awareness and capacity of judges and court staff, including the Supreme Court, the courts of appeal and first instance courts, to apply international human rights standards. In close cooperation with the High School of Justice, OHCHR trained judges, with an emphasis on the right to equality and combating discrimination and hate speech; on the freedoms of opinion, expression and religion or belief; on the right to private and family life; and on access to justice for persons with disabilities. OHCHR developed two training modules for judges, on the prohibition of torture and on the right to private and family life. OHCHR also conducted relevant training-of-trainers workshops.

12. OHCHR has continued its well-established cooperation with the Georgian Bar Association. The training provided by OHCHR has continued to be included on the list of professional courses for practising lawyers.

13. According to the Government of Georgia, the implementation of a fourth wave of judicial reforms was ongoing and a judicial strategy for the period 2017–2021 was developed during the reporting period.

14. At the same time, OHCHR takes note of the information provided in the submission of the Public Defender of Georgia that "the independence of the courts is problematic". The Public Defender cited lack of internal checks and balances as well as the high number of lengthy proceedings in appeal courts, breaches of the principle of fairness and concerns related to the use of inadmissible evidence and reasoning of court decisions.

15. The Public Defender monitored the proceedings in the high-profile case of archpriest Giorgi Mamaladze (the so-called "cyanide case"), who was accused of plotting a murder. In her report, published in September 2017, she identified various procedural shortcomings in

[4] The Committee on Legal Issues and the Committee on Human Rights and Civic Integration.

the trial of Mr. Mamaladze such as lack of equality of arms, limitation of the right to a public trial, violations of the principle of presumption of innocence and absence of a reasoned judgment.[5]

16. Another high-profile case was the disappearance of Afgan Mukhtarli, an Azerbaijani journalist, from central Tbilisi on 29 May 2017. On 15 June 2017, the European Parliament strongly condemned the abduction of Mr. Mukhtarli and urged the Georgian authorities "to ensure a prompt, thorough, transparent and effective investigation into Afgan Mukhtarli's forced disappearance in Georgia and illegal transfer to Azerbaijan and to bring the perpetrators to justice".[6] According to various sources, including the submission from Human Rights Watch, the investigation opened into this case reportedly remained inconclusive one year after the incident.

17. In November 2017, the Grand Chamber of the European Court of Human Rights adopted a decision in the case *Merabishvili v. Georgia*, involving the detention of former Prime Minister of Georgia Ivane Merabishvili. The Court concluded that, while the detention of Mr. Merabishvili had initially been in conformity with article 5 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (the right to liberty and security of person) and related to the investigation of offences based on a reasonable suspicion, the predominant purpose of detention later changed. According to the Court, the reason for the changed purpose of detention was to obtain information about former high-level political leaders, and "was thus chiefly meant for an ulterior purpose not prescribed by the Convention". The Court therefore established a violation of article 18 (limitation on use of restriction on rights) in conjunction with article 5 (1) of the Convention.[7]

2. Combating torture and ill-treatment

18. Georgia has achieved significant progress in combating torture and other types of ill-treatment in the penitentiary system, which has been acknowledged by various national and international mechanisms.[8]

19. However, as pointed out by various international and national actors, including in the submissions of the Public Defender and Human Rights Watch to OHCHR, lack of accountability for those who commit acts of torture or degrading treatment remains a serious problem.[9] According to Human Rights Watch, at the time of its submission in May 2018, the Prosecutor's Office had launched investigations into 63 allegations of torture and ill-treatment since 2014 at the request of the Ombudsperson, but none had led to a criminal prosecution.

20. On several occasions, international mechanisms recommended to the Government of Georgia that it create an independent body to investigate alleged violations by law enforcement agents. OHCHR has been advocating for the creation of such a mechanism for years. In February 2018, the Government endorsed a bill on the State inspector and submitted it to parliament. If the bill is adopted, the office of the inspector will absorb the current functions of the Personal Data Protection Inspector and will have the competence to investigate — but not to prosecute — allegations of serious human rights violations by law

[5] See "Public Defender's monitoring findings in the so-called cyanide case", 15 November 2017, available at http://ombudsman.ge/uploads/other/4/4916.pdf.

[6] See www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0267+0+DOC+XML+V0//EN.

[7] See https://hudoc.echr.coe.int/eng-press#{"itemid":["003-5927865-7571644"]}.

[8] See, for example, the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia (A/HRC/31/57/Add.3).

[9] See, for example, the report of the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, document CPT/Inf (2015) 42; National Human Rights Action Plan for 2016–2017 of Georgia; and *Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2017*, p. 65, available at www.ombudsman.ge/uploads/other/5/5301.pdf.

enforcement and other public officials. The bill envisages a State inspector elected for a single six-year term and accountable to parliament.

21. OHCHR considers this text to be a step forward. OHCHR provided comments on the bill, most of which were reflected in the version submitted to parliament. OHCHR further recommends eliminating from the current text provisions exempting the Minister of Internal Affairs and the Head of State Security from being investigated, limiting the role of prosecutorial authorities during the investigatory phase and enabling the State inspector to obtain permission to conduct investigatory actions directly through national courts.

3. Combating discrimination

22. Combating discrimination remains a priority for OHCHR capacity-building activities in Georgia. The Public Defender stated in her submission that the realization of the right to equality remained a challenge and that discrimination was frequent in the private sector. She stressed the need for the timely adoption of the draft amendments submitted by her Office to parliament in 2015 to eliminate shortcomings in the current anti-discrimination legislation. These included proposals to enforce the law in the private sector and to extend the deadline for filing complaints of alleged discrimination with the courts. The Public Defender also highlighted that the current law did not recognize harassment, sexual harassment and denial of reasonable accommodation for persons with disabilities as forms of discrimination.

23. In her submission, the Public Defender reported that her Office had considered 162 new cases of alleged discrimination in 2017. The largest number of complaints concerned alleged discrimination on the grounds of disability, gender, ethnicity, differing opinion, religion, sexual orientation and gender identity, citizenship and political opinion. According to the Public Defender, the most vulnerable groups in terms of realization of the right to equality remained women; persons with disabilities; children; lesbian, gay, bisexual, transgender and intersex persons; and members of religious minorities. Discrimination was most frequently alleged to occur in the area of precontractual and labour relationships and had also proved to be a problem in the allocation of social benefits.

24. As in 2017, at the invitation of the Government of Georgia, OHCHR observed a rally held on 17 May 2018 in Tbilisi by the lesbian, gay, bisexual, transgender and intersex community on the occasion of the International Day against Homophobia, Transphobia and Biphobia. While some lesbian, gay, bisexual, transgender and intersex organizations decided not to participate due to concerns over potential counter-demonstrations and threats of violence, significant protection ensured by the police made the rally possible. The presence of high-level officials at the site of the rally was perceived as a strong signal of the Government's commitment to ensure the right to peaceful assembly of all individuals.

25. Discrimination on religious grounds is a matter that OHCHR continues to address regularly through its capacity-building activities. In its first report on cooperation with Georgia, OHCHR highlighted the situation of Muslims in the city of Batumi who had been forced to pray in the open air due to the small size of the mosque and who had encountered difficulties in obtaining a permit for the construction of a new mosque.[10] According to information provided to OHCHR for the present report, the New Mosque Building Foundation in Batumi that purchased land in 2016 for the construction of a new mosque was denied a construction permit. It subsequently launched appeal proceedings before the courts. During the reporting period, OHCHR has not been able to confirm whether a reconstruction or expansion project for the existing mosque had begun.

4. Promoting gender equality and combating domestic violence

26. OHCHR has continued to contribute to advocacy by the United Nations country team in Georgia to promote gender equality and combat domestic violence. In 2017, Georgia ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and adopted a legislative package to align domestic

[10] See A/HRC/36/65, para. 22.

law with the Convention. OHCHR welcomes these developments, followed by the adoption on 11 April 2018 of the National Action Plan on Measures to be Implemented for Combating Violence against Women and Domestic Violence for the period 2018–2020.

27. In addition, in November 2017, the Office of the Public Defender launched the first monitoring report on femicide, with the support of the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women). Within the Ministry of Internal Affairs, a specialized Human Rights Department was created in January 2018 to oversee, inter alia, investigations into cases of sexual and domestic violence, identify challenges and issue recommendations. Further to awareness-raising campaigns by UN-Women and the Georgian authorities, the United Nations country team has reported an increase in the number of disclosures and criminal prosecutions of cases of violence against women and domestic violence within the period 2014–2017.

28. Yet, in its submission to OHCHR the Office of the Public Defender underscored the high number of killings of women. It cited data from the Chief Prosecutor's Office according to which in 2017, investigations were launched into 26 killings of women (including cases involving evidence of domestic violence) and 15 attempted killings (including cases involving evidence of domestic violence). According to the Public Defender, the high number of killings of women was linked, inter alia, to the absence of a mechanism to monitor and assess risks of violence against women and domestic violence.

29. In her submission, the Public Defender stated that women's participation in Cabinet positions remained low for 2018. As of May 2018, 3 ministers out of 14 were women. While women comprised the majority of employees at the ministries, their share of managerial positions was low. Moreover, only one ministry had an adviser on gender issues; eight ministries did not have such a position at all and in six ministries the gender advisory function was performed by officials with other responsibilities. The Public Defender also highlighted women's limited participation in local self-governance, with a low number of women candidates in the 2017 local elections and weak representation in municipal councils. As of May 2018, there was only one female mayor in Georgia.

5. Business and human rights

30. According to several reports received by OHCHR, workplace safety and other worker protections are weak in Georgia, while investigations into workplace incidents rarely lead to accountability. Workers in the mining and construction industries are particularly affected. OHCHR has been closely following reports on deaths resulting from unsafe conditions of work in Georgia and stresses the need for urgent attention to the matter, including through a broader engagement of businesses on human rights. According to the Public Defender, 252 people died in the period 2011–2016 due to unsafe working conditions. In 2017, workplace accidents resulted in the deaths of 47 individuals and injuries to 106. According to the Government, 234 persons were prosecuted for violations of workplace safety rules in the period 2011–2016, 43 in 2017 and 23 between January and June 2018.

31. OHCHR notes the adoption of the Law on Occupational Safety in March 2018. It introduces, inter alia, a mechanism — the Labour Conditions Inspection Department of the Ministry of Labour, Health and Social Issues — tasked with enforcing applicable obligations on workplace safety, including by imposing sanctions when appropriate. The Public Defender welcomed this development. However, she expressed concerns over shortcomings in the new law, notably its limited scope, which excluded hard, harmful and dangerous work.

B. Access to Abkhazia and South Ossetia

32. During the reporting period, there has been no progress in granting access for OHCHR and international human rights mechanisms to Abkhazia and/or South Ossetia pursuant to Human Rights Council resolution 37/40.

33. On 17 April 2018, pursuant to that resolution, OHCHR sent letters to the authorities in control in Abkhazia and in South Ossetia seeking unfettered access to these areas to gather factual and reliable information on the human rights situation on the ground.

34. On 18 April 2018, OHCHR received a response from the authorities in control in Abkhazia, indicating that they did not intend to invite Human Rights Council experts due to what they considered to be an inability to express their position in such international forums. At the time of finalization of the present report, the authorities in control in South Ossetia had not replied to the above-mentioned letter from OHCHR.

35. In his 2018 report to the General Assembly on the status of internally displaced persons and refugees from Abkhazia, Georgia and the Tskhinvali region/South Ossetia, Georgia, the Secretary-General reiterated his call to grant unfettered access for OHCHR to be able to assess human rights protection needs and to support related mechanisms on the ground.[11]

36. The Secretariat of the Council of Europe has not been allowed to visit Abkhazia and South Ossetia for the purpose of preparing its latest consolidated reports on Georgia. It therefore indicated that it had had no opportunity to assess the human rights situation on the ground. However, the Council of Europe was granted access to Abkhazia for the purpose of implementation of confidence-building measures, but not to South Ossetia.[12] In its decision of 2 May 2018, the Committee of Ministers of the Council of Europe expressed deep regret that the organization's Commissioner for Human Rights, its monitoring bodies or the Secretariat delegation preparing the Secretary-General's consolidated reports had not been granted access to these regions.[13]

37. During the period under review, the report on the human rights situation in Abkhazia prepared by two independent experts, Thomas Hammarberg and Magdalena Grono, following their earlier visits there,[14] became publicly available.[15] The authors underlined that further international visits to Abkhazia on human rights issues would benefit all parties.[16]

38. During the reporting period, several United Nations development and humanitarian actors continued to have operational access to Abkhazia. The authorities in control in Abkhazia and the Government of Georgia have, inter alia, allowed the Office of the United Nations High Commissioner for Refugees (UNHCR) to introduce the services of a second shuttle bus[17] to transport people across the Inguri Bridge, the main crossing point between Abkhazia and the Tbilisi-controlled territory.

39. Local staff of United Nations agencies and international non-governmental organizations who are allowed to access Abkhazia are, however, subjected to requirements, introduced by the authorities in control in Abkhazia, before crossing the Administrative Boundary Line, which have limited their operational flexibility.[18]

40. There has been no progress in granting access to South Ossetia to United Nations development and humanitarian agencies, nor to its human rights mechanisms.

41. OHCHR reiterates the importance of reviewing and, if necessary, adjusting or complementing the Georgian Law on Occupied Territories so as to facilitate unhindered, predictable and sustainable access and service delivery by humanitarian and development

[11] See A/72/847, para. 10.

[12] See, for example, "Consolidated report on the conflict in Georgia (October 2017–March 2018)", document SG/Inf (2018)15, paras. 5 and 73.

[13] See paragraph 11 of decision CM/Del/Dec(2018)1315/2.1, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016807c117a.

[14] See also A/HRC/36/65, para. 33.

[15] Thomas Hammarberg and Magdalena Grono, "Human rights in Abkhazia today", July 2017, available at www.palmecenter.se/wp-content/uploads/2017/07/Human-Rights-in-Abkhazia-Today-report-by-Thomas-Hammarberg-and-Magdalena-Grono.pdf.

[16] Ibid., pp. 10 and 76.

[17] On the services of the first shuttle bus, see, inter alia, A/HRC/36/65, para. 35.

[18] See A/72/847, para. 51.

actors in Abkhazia and South Ossetia.[19] According to information available to OHCHR, some provisions of the law continue to have a complicating effect on the operational environment, while the alternative proposals or mitigating solutions are considered insufficient.[20] The Council of Europe recalled in this regard that earlier draft amendments to relevant legislation that were in line with the recommendations of the European Commission for Democracy through Law were still pending before the parliament of Georgia.[21]

C. Situation of internally displaced persons and refugees

42. In resolution 37/40 the Human Rights Council expressed concern that internally displaced persons and refugees continued to be deprived of the right to return to their homes in a safe and dignified manner. Pursuant to General Assembly resolution 71/290, the Secretary-General prepared his annual report on the status of internally displaced persons and refugees from Abkhazia and South Ossetia (A/72/847), covering the period from 1 April 2017 to 31 March 2018. The present report will therefore not address this subject.

D. Human rights framework and key issues concerning Abkhazia and South Ossetia

43. The authorities in control in Abkhazia and South Ossetia are responsible for upholding the fundamental freedoms and human rights of all people living under their control because any conduct that affects the human rights of concerned individuals must be addressed, regardless of questions related to the status of territories and entities. [22]

44. In the present section, the main human rights matters concerning Abkhazia and South Ossetia during the reporting period are described. Due to the lack of access by OHCHR, the content is based on information received by the Office and available in credible open-source documents. The series of international human rights standards as underscored in the first report of the High Commissioner on this subject continue to apply.[23]

45. The report of Thomas Hammarberg and Magdalena Grono on human rights in Abkhazia, published during the period under review, supplemented the information available on human rights issues related to Abkhazia. There is no comparable independent baseline assessment of the human rights situation in South Ossetia.

46. In their report, Mr. Hammarberg and Ms. Grono provided an account of human rights issues identified in Abkhazia and put forward recommendations to address various shortcomings. The experts, as well as the European External Action Service in its submission, noted the existence of local mechanisms of relevance for human rights protection. Mr. Hammarberg and Ms. Grono also indicated that several existing human rights problems "can be addressed, and even resolved, before a comprehensive political agreement has been reached".[24]

47. During the reporting period, the absence of a political and legal solution, compounded by the ensuing political divergences that inform various decisions and practices, has continued to undermine the protection of human rights in Abkhazia and South Ossetia and to adversely affect the local population.

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[19] See also A/HRC/36/65, para. 37.

[20] See, inter alia, A/72/847, paras. 47–48.

[21] See SG/Inf(2018)15, para. 26.

[22] See also A/HRC/36/65, para. 40.

[23] Ibid., in particular paras. 46, 48, 51, 61, 66, 67, 71, 72 and 80.

[24] Hammarberg and Grono, p. 76.

1. Truth and accountability

Truth and accountability processes

48. During the reporting period, the International Criminal Court has continued to investigate alleged crimes committed in the context of an international armed conflict between 1 July and 10 October 2008 in and around South Ossetia, which include crimes against humanity and war crimes.[25]

49. On 23 May 2018, the Grand Chamber of the European Court of Human Rights held a hearing on application No. 38263/08 by the Government of Georgia concerning the armed conflict in August 2008 and its aftermath. In this case the Court is considering issues related to the right to life; torture and inhuman and degrading treatment; the rights to liberty and security; the right to respect for private and family life; the right to an effective remedy; protection of property; the right to education; and freedom of movement.[26]

Missing persons

50. The International Committee of the Red Cross (ICRC) has continued working under its coordination mechanisms established to clarify the fate of persons missing in relation to the armed conflicts of the 1990s and 2008 and their aftermaths. According to the information available as of 23 April 2018, more than 2,400 persons remained unaccounted for as a consequence of these conflicts.[27]

51. In connection with the conflict in Abkhazia in the 1990s, ICRC reported on the gradual recovery and identification of human remains as well as their transfer to the families.[28] Exhumations also took place in South Ossetia, but identification proved difficult. Discussions were held in February 2018 under the coordination mechanism on further necessary steps to clarify the fate and whereabouts of missing persons.[29]

52. The subject of missing persons continued to be raised within the Geneva international discussions during the reporting period. The work of an expert commissioned by the Organization for Security and Cooperation in Europe to focus on missing persons from South Ossetia is reportedly continuing.[30]

53. According to information received from the European External Action Service, the European Union Special Representative for the South Caucasus and the Crisis in Georgia encouraged the Government of Georgia to achieve progress in establishing a commission on missing persons.

2. Violations of the right to life

54. Although incidents of violations of the right to life have remained rare in the past few years, the death in custody of an ethnic Georgian, Archil Tatunashvili, in Tskhinvali, South Ossetia, following his alleged detention on 22 February 2018, and the subsequent handling of this incident are of great concern. The circumstances of the death of Mr. Tatunashvili remain unclear, with conflicting information received from various sources. While the authorities in control in South Ossetia reportedly made statements about heart failure being the reason for Mr. Tatunashvili's death, the Government of Georgia indicated that torture was the cause. According to available information, investigation and judicial proceedings by Georgian authorities on this case were ongoing as of May 2018.

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[25] See www.icc-cpi.int/Georgia.

[26] See www.communications-unlimited.nl/wp-content/uploads/2018/05/Grand-Chamber-hearing-Georgia-v.-Russia-II-1.pdf.

[27] See www.icrc.org/en/document/remains-another-22-persons-missing-1992-93-armed-conflict-abkhazia-identified.

[28] See ICRC, press releases, 23 April 2018, 16 October 2017 and 9 November 2017.

[29] See www.icrc.org/en/document/georgia-south-ossetia-meeting-find-those-missing-connection-conflicts-1990s-and-august-0.

[30] See, inter alia, A/72/847, para. 11.

55. The lack of progress in investigating and/or ensuring justice in two other incidents of alleged unlawful death or killing in past years continues to raise major concern. The alleged perpetrator of the killing of an ethnic Georgian, Giga Otkhozoria, at the Abkhaz Administrative Boundary Line in 2016 remains at large. According to the Public Defender of Georgia, there has also been no progress in ensuring justice in the case of the disappearance and death in 2014 of David Basharuli, a resident of Akhalgori, South Ossetia. These incidents contribute to a climate of impunity in both areas.

3. Restrictions on freedom of movement

56. Various reports indicated that restrictions on freedom of movement, mainly around the Administrative Boundary Lines, remained of particular concern in both Abkhazia and South Ossetia and adjacent areas. In their report on human rights in Abkhazia, Mr. Hammarberg and Ms. Grono referred to the situation related to freedom of movement as "an acute issue".[31] In addition to constituting a human right per se, freedom of movement is a condition necessary for the exercise of other rights and an important confidence-building measure. Immediate attention to ensuring its respect in accordance with international human rights norms and standards is essential.

57. According to information received by OHCHR, the process of so-called "borderization" has continued in both Abkhazia and South Ossetia, resulting in further limitations to freedom of movement and severely affecting local livelihoods. Installation of razor and barbed wire fences, trenches, "border signs" and other barriers across the Administrative Boundary Lines, compounded by the deployment of surveillance equipment, has continued. According to the submission of the Government of Georgia, the process in both regions has led to approximately 25 villages being cut off, 800 families losing access to agricultural lands and water supplies and 20 families being directly affected by barbed wire installed through their property.

58. The situation of the local population is reportedly rendered more vulnerable by the very limited availability of open and functioning crossing points across the Administrative Boundary Lines. In Abkhazia, only two crossing points — out of a total of six — remained functional at the time of the finalization of the present report. According to various sources, while the total number of persons crossing the Administrative Boundary Line has not decreased since the closure of former crossing points, their closure has affected the movement of the population residing in lower Gali District.

59. According to information from the Government of Georgia, only two crossing points are operating across the Administrative Boundary Line with South Ossetia and they are reportedly closed periodically for various reasons. The establishment of a "customs post" at the Mosabruni/Odzisi crossing point is reported, inter alia, to have added a layer of difficulty to the crossing process.[32]

60. The authorities in control in Abkhazia and South Ossetia are reported to have continued the practice of deprivation of liberty and/or levying of heavy fines in connection with crossing the Administrative Boundary Lines, notably at what they consider "unauthorized crossing points". The deprivation of liberty is usually of short duration, although cases of long-term duration in Abkhazia also occur in this context (see sect. D.4 below).

61. OHCHR has continued to receive information on the implications of various regulations, regimes and practices applied by the authorities in control in Abkhazia and South Ossetia with regard to the possession of personal documents. These include the so-called "Law on Procedures of Exit from the Republic of Abkhazia and the Entry into the Republic of Abkhazia" and the so-called "Law on the Legal Status of Foreigners in Abkhazia", providing, inter alia, for the introduction of a "foreign residence permit" meant to regulate the stay of ethnic Georgians in Abkhazia, particularly in Gali, Tkvarcheli and

[31] Hammarberg and Grono, p. 10.

[32] See, inter alia, A/72/847, para. 19; and SG/Inf(2018)15, para. 53.

Ochamchira. The authorities in control in South Ossetia reportedly introduced similar procedures related to entry and exit.[33]

62. Although the "foreign residence permits" were reportedly being issued to some extent in Gali and adjacent areas during the period under review, the vast majority of the population is reportedly reluctant to apply for such "permits", for various reasons. In order to obtain one, the applicant reportedly has to accept the status of foreigner, which results in a situation where a part of the local population in Abkhazia is compelled to declare itself as "foreign" and to register as such despite the fact that they have resided in Abkhazia for many generations. The European External Action Service in its submission underlined that, above all, ethnic Georgians in Gali did not want to be considered as foreigners in their homeland. The strict eligibility requirements and the uncertainty over the possibility to enjoy political and property rights under these documents have also been reported as concerns by various sources, including in submissions to OHCHR.

63. According to various sources, in this context a significant number of the residents in Gali, Tkvarcheli and Ochamchira, and their children, do not possess necessary identity documents, which further affects their ability to cross the Administrative Boundary Line or access services in Abkhazia. Due to the above-mentioned reluctance as well as the reportedly slow process of issuance of the "foreign residence permit", the authorities in control in Abkhazia continued to extend the validity of the "No. 9 forms", temporary documents that allow residents to cross the Administrative Boundary Line. According to the submission of the European External Action Service, the authorities in control in Abkhazia have indicated that they are reviewing the so-called "Law on the Legal Status of Foreigners in Abkhazia" and the provisions on the "foreign residence permit".

64. The Government of Georgia continues to consider the above-mentioned documents issued by the authorities in control in Abkhazia and South Ossetia as null and void.

65. The measures related to the so-called "borderization", the limited availability of functioning crossing points and the lack of clarity over necessary identity documents have continued to exacerbate the isolation and vulnerability of the local population. The rights to education, health and property are particularly affected by these measures, as elaborated below.

66. In November 2017, the Public Defender of Georgia published a special report on the impact of the closure of crossing points on the rights of the population living along Abkhazia's Administrative Boundary Line, which provides further details on the situation.[34]

4. Deprivation of liberty and allegations of ill-treatment

67. OHCHR has continued to receive reports of cases of deprivation of liberty in connection with the crossing of the Administrative Boundary Lines, notably at what the authorities in control consider "unauthorized crossing points". Many of the persons apprehended or detained in such cases are requested to pay considerable fines. In its submission to OHCHR, the Government of Georgia reported that between May 2017 and May 2018, it had registered 115 persons detained in South Ossetia and 47 in Abkhazia for so-called "illegal border crossing".

68. The Public Defender of Georgia has qualified "infringement of freedom of movement and illegal detentions by the Russian Border Guards along the Administrative Boundary Lines" as "one of the key security challenges facing local communities on both sides" of the Administrative Boundary Lines. Her Office reported that in 2017, 514 residents had been detained along the South Ossetian Administrative Boundary Line and 1,000 along the Abkhazian Administrative Boundary Line.

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[33] See A/72/847, para. 29.

[34] Available at www.ombudsman.ge/en/reports/specialuri-angarishebi/special-report-of-the-public-defender-of-georgia-on-the-impacts-of-the-closure-of-crossing-points-on-the-rights-of-the-population-living-along-abkhazias-administrative-boundary-line page.

69. The Council of Europe specifies that no comprehensive statistical data exist on the number of such detentions in South Ossetia, due to the fact that available information is limited to cases of detention of ethnic Georgians who are subsequently returned to Tbilisi-controlled territory. It is unclear to what extent data are available on individuals who remain in Tskhinvali and who are reportedly also affected.[35]

70. In their report, Mr. Hammarberg and Ms. Grono also mentioned the issue of such detention practices in Abkhazia. More generally, they stressed the need for new and more humane detention facilities and for interim measures to improve the conditions for inmates.[36]

71. The Office of the Public Defender of Georgia reported having documented several cases of physical violence against detainees in the detention facilities in Abkhazia and South Ossetia. It referred to data provided by the Georgian Security Service for 2014–2016, when 37 individuals reported having been subjected to physical abuse while being detained along one of the Administrative Boundary Lines.

5. Right to health

72. OHCHR received information indicating that the right to health, including access to health care, in both Abkhazia and South Ossetia continued to be seriously affected due to the restrictions on freedom of movement described above. Patients reportedly have to spend more money and time than before to travel to facilities and receive health services in the Tbilisi-controlled territory. One serious consequence is the delayed provision of health care, which raises particular concern in cases of medical emergencies. The reduced quality of health care is another reported concern.

73. In Abkhazia, some concerns have been reported about the impact of incomplete documentation and limited functioning of crossing points on the circulation of medical emergency vehicles across the Administrative Boundary Line and the consequent delayed provision of treatment. The difficulty of organizing responses to medical emergencies without documentation has been mentioned.[37] According to the European External Action Service, the evolving "borderization" has jeopardized access to free hepatitis C treatment under a 2017 initiative of the Government of Georgia to provide free treatment to the residents of Abkhazia and South Ossetia.

74. In South Ossetia, patients and medical emergency vehicles are reported to face difficulties due to the restrictions on crossing the Administrative Boundary Line. Rules reportedly introduced in November 2017 have been particularly restricting movement of emergency vehicles during night-time and on weekends.

75. The right to health is also affected by other decisions of the authorities in control. Various sources have reported on serious concerns about the total ban on abortion services introduced in Abkhazia in 2016. The United Nations country team in Georgia has also reported that the population in Abkhazia still lacks access to basic reproductive health services, including family planning, which are of particular importance in the context of the abortion ban. The United Nations Population Fund is currently providing support in this area with projects aimed at improving the reproductive health and rights of conflict-affected women and youth, strengthening resilience and fostering people-to-people interaction across the Administrative Boundary Line.

6. Right to education

76. The restrictions on the use of Georgian as a language of instruction reportedly continued to be applied in Abkhazia and were introduced in South Ossetia during the reporting period. According to various sources, these restrictions particularly affect the communities who identify as ethnic Georgians living in Gali, Abkhazia, as well as in Akhalgori and other areas in South Ossetia.

[35] See SG/Inf(2018)15, para. 54.
[36] Hammarberg and Grono, pp. 8 and 68.
[37] Ibid., p. 66.

77. In Abkhazia, Georgian as the language of instruction in courses for the lower grades continues to be replaced by Russian. According to various sources, this practice has proven to be a barrier, for both teachers and students, to providing or benefiting from quality education and reportedly runs counter to pupils' wishes. According to the Government of Georgia, since the introduction of these measures in 2015, 4,000 pupils have been deprived of the right to receive education in their native Georgian language. Mr. Hammarberg and Ms. Grono noted in their report that the "language of instruction issue in Gali has become critical and divisive, and requires urgent attention".[38]

78. The multifaceted restrictions on freedom of movement further complicate the situation. As a result of much longer travel times, children and youths who have been crossing the Administrative Boundary Line to attend schools or extracurricular activities in the Georgian language have reportedly found it difficult, if not impossible, to pursue their education and related activities across the line.

79. In South Ossetia, the authorities in control similarly decided to introduce Russian as the language of instruction in the Georgian-speaking schools, starting with the lower grades for the school year 2017/18. According to the Public Defender of Georgia, these measures apply to six primary schools in Akhalgori, where Georgian is now taught only as a foreign language. The Government of Georgia indicated that approximately 100 schoolchildren in Akhalgori, Znauri and Sinaguri had been affected.

7. Property issues

80. Property rights remain a complex matter in both Abkhazia and South Ossetia, with no progress reported during the period under review on restitution of, or compensation for, property left behind by internally displaced persons. The effects of the so-called "borderization" and the frequency of apprehensions due to crossing of the Administrative Boundary Lines hinder and discourage access by the local population to property situated across the lines. The lack of clarity over the necessary identity documents has resulted in further infringements on the right to property, with the "foreign residence permits" in Abkhazia reportedly not conferring the right to property. According to the Government of Georgia, the practice of deliberately burning and destroying the houses of ethnic Georgians continues on a regular basis.

81. In 2017, the authorities in control in South Ossetia reportedly renewed the practice of demolishing the ruins of houses belonging to internally displaced persons. The Government of Georgia in its submission referred to several cases registered in 2017 in Akhalgori, where the houses abandoned by ethnic Georgians were burned and looted. OHCHR received information expressing particular concern over the village of Eredvi, where the ruins of 268 houses, most of them belonging to displaced ethnic Georgians, were razed and removed in late 2017, reportedly to prepare the land for agricultural purposes. In this regard, the European External Action Service noted that while a procedure to request that such houses or their ruins not be demolished was in place, such requests must be submitted in Tskhinvali, thereby preventing displaced ethnic Georgians who had fled the region from pursuing this avenue.

8. Gender-based and domestic violence

82. In their report, Mr. Hammarberg and Ms. Grono referred to a number of interlocutors who described domestic violence as an existing issue but one which was *difficult* to discuss in Abkhazia. They also mentioned some concerns raised about the recent emergence of honour killings.[39]

83. According to information received from the United Nations country team in Georgia, UN-Women, supported by UNHCR, has established a programmatic presence in Abkhazia focusing primarily on gender-based violence. Through a joint project, UN-Women and UNHCR have supported non-governmental organizations to provide services

[38] Ibid., p. 9.
[39] Ibid., pp. 47–48.

for victims of violence against women and domestic violence, supported capacity-development of women's non-governmental organizations, implemented awareness-raising activities aimed at promoting zero tolerance of violence against women and domestic violence, and provided health counselling. As indicated in the submission of the United Nations country team received in May 2018, the project recorded 83 cases of violence against women. UN-Women noted, however, that the victims often chose not to disclose the abuse or violence.

9. Role of civil society

84. Reports received by OHCHR indicate that, since the introduction of local regulations on "foreign agents" in 2014, the space for civil society work has diminished considerably in South Ossetia. A number of non-governmental organizations in South Ossetia have ceased their activities since 2014 while others, especially those involved in confidence- and peacebuilding projects and interaction with international organizations, are reportedly subject to pressure and verbal assaults.

85. OHCHR received information on the alleged intimidation in 2017 of Tamara Mearakishvili, an ethnic Georgian and civil society activist in Akhalgori who had been cooperating with the international community and reporting on human rights violations. According to the Public Defender of Georgia and the European External Action Service, she was "unlawfully detained" and/or interrogated on several occasions and deprived of her identity documents. Information available in the media as of May 2018 indicated that she had been acquitted in one of the two cases against her.[40]

86. With regard to the situation in Abkhazia, Mr. Hammarberg and Ms. Grono noted the existence of numerous non-governmental groups that were generally operating without encountering restrictive requirements or controls. At the same time, they mentioned reports of the shrinking of operational space and funding from external sources for many non-governmental organizations in recent years, and cases of social pressure on non-governmental organizations.[41] The Council of Europe also reported about the continued stringent conditions faced by local non-governmental organizations funded by foreign donors.[42]

10. Confidence-building measures

87. The Council of Europe continued to implement confidence-building measures in Abkhazia based on the specific human rights needs of the affected population, while noting the impossibility of developing and implementing such measures in South Ossetia due to lack of access and the generally non-conducive environment for international engagement in this region.[43]

88. In April 2018, the Government of Georgia launched a package of proposals entitled "A step toward a better future", which is directed, inter alia, towards confidence-building between the communities across the Administrative Boundary Lines. The initiatives focus on enhancing and simplifying trade along the Administrative Boundary Lines; creating new education opportunities both internally and externally; facilitating access to documentation; and creating a mechanism to extend and simplify access to the benefits and regimes enjoyed by Georgia internationally (for example, the visa-free regime with the European Union).

89. The Secretary-General welcomed the recent statements and legislative initiatives of the Government of Georgia to enhance economic and people-to-people engagement across the Administrative Boundary Lines.[44] Given the positive impact that these proposals might

[40] See, for example, "South Ossetian court acquits civil activist Tamara Mearakashvili", JAM News, 4 May 2018.

[41] Hammarberg and Grono, p. 8.

[42] See SG/Inf(2018)15, para. 29.

[43] Ibid., paras. 67–73.

[44] See A/72/847, para. 61.

have on the human rights of the affected population in Abkhazia and South Ossetia. OHCHR echoes the Secretary-General's hope that these efforts will be translated into concrete steps to improve the situation of people in both regions.

III. Conclusions

90. **The High Commissioner reiterates his appreciation for the continuous cooperation between the Government of Georgia and his Office, which demonstrates the Government's commitment to human rights. Building on this strong partnership, OHCHR remains committed to further supporting the Government and other national stakeholders to continuously improve the promotion and protection of all human rights by all in Georgia, including through the implementation of the Human Rights Action Plan 2018–2020.**

91. **OHCHR welcomes the various achievements made during the reporting period, such as the progress on the draft law on the State inspector, policies to combat domestic violence and the adoption of the Law on Occupational Safety. Further attention is required to tackle persisting challenges in the administration of justice, to ensure equality and fight discrimination, to strengthen freedom of religion or belief, to ensure accountability for violations committed by law enforcement agents and to reduce gender-based and domestic violence in practice. Emerging challenges such as unsafe working conditions also require immediate attention.**

92. **The High Commissioner regrets that there has been no progress in granting access to OHCHR and other international human rights mechanisms to Abkhazia and South Ossetia pursuant to Human Rights Council resolution 37/40. While OHCHR welcomes the fact that the authorities in control in Abkhazia have continued to provide access to some United Nations development and humanitarian actors, it reiterates its call for the same treatment to be accorded to the human rights pillar. OHCHR is concerned about the lack of access by OHCHR and international human rights mechanisms to South Ossetia and the scarcity of information available on the human rights situation there. OHCHR reiterates its call to the authorities in control in South Ossetia to provide regular access to actors dealing with human rights. Access to these regions would enable OHCHR and other actors to conduct assessments so as to better understand human rights needs, tailor assistance and contribute to confidence-building with a view to enhancing human rights protection of the affected population.**

93. **The few available reports have pointed to serious human rights issues in Abkhazia and South Ossetia and also highlighted the need for credible and verified information. The absence of a political solution, compounded by ensuing political divergences that inform decisions and practices, continues to adversely affect the rights of the local population. Growing restrictions on freedom of movement and other measures have negative implications on the rights to education, health and property. Ethnic Georgians also appear to regularly face various forms of discrimination. The death in custody of Archil Tatunashvili in Tskhinvali in February 2018 and other unresolved cases of alleged unlawful death or killing need to be addressed with a view to establishing facts and response mechanisms in order to avoid tensions and, ultimately, to ensuring justice and accountability.**

94. **OHCHR stresses the importance of continued efforts to foster people-to-people contacts and welcomes initiatives in this regard. OHCHR also reiterates its support for efforts made in the context of the Geneva international discussions as a critical element in the creation of the necessary conditions for the improvement of the human rights situation of the affected people living in Abkhazia and South Ossetia and adjacent areas.**